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No. 80-1410

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

E-SYSTEMS, INC.,

Petitioner,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) and its LOCAL UNION 848,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION FOR UAW & its LOCAL 848

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Must a court, on application for an order to compel arbitration of a dispute involving the applicability of the collective bargaining agreement to one of an employer's facilities, decide, as a matter of subject matter arbitrability, whether the agreement in fact was intended to cover the plant?

2. Does the jurisdiction of the National Labor Relations Board to decide representation questions deprive a District Court of the power to enforce a contractual duty to arbitrate a dispute concerning the intended scope of a collective bargaining agreement?

TABLE OF CONTENTS

	Page
COUNTERSTATEMENT OF QUESTIONS PRESENTED	i
TABLE OF CONTENTS	iii
INDEX OF AUTHORITIES	iv
OPINIONS BELOW	1
COUNTERSTATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	4
I. THE LEGAL PRINCIPLES CONTROLLING THE DECISION OF THIS CASE ARE SETTLED	5
II. THE COURT OF APPEALS APPLIED THE CONTROLLING LEGAL PRINCIPLES CORRECTLY	6
CONCLUSION	7

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INDEX OF AUTHORITIES

Cases Page

Carey v. *Westinghouse Corporation*, 375 U.S. 261 (1964) 5, 6

United Steelworkers of America v. *America Manufacturing Co.*, 363 U.S. 564 (1960) 5, 6

United Steelworkers of America v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960) 5

Statutes

Labor Management Relations Act (LMRA)

§ 301, 29 U.S.C. § 185 4

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The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local Union 848, respectfully request that the Court *deny* the Petition for Writ of *Certiorari.*

OPINIONS BELOW

The Memorandum Opinion of the District Court for the Northern District of Texas has not been reported. It is reproduced in the Appendix to the Petition at A-1. The Opinion of the Court of Appeals for the Fifth Circuit is reported at *UAW & its Local 848* v. *E-Systems, Inc.*, 632 F. 2d 487 (5th Cir. 1980).

COUNTERSTATEMENT OF THE CASE

The Union,[1] initiated this action when the Employer[2] refused to arbitrate two grievances filed pursuant to their collective bargaining agreement. The dispute underlying the grievances is whether or not the 1978 collective bargaining agreement controlling at the Employer's Garland, Texas facility also applies at its closed, then reopened Arlington, Texas plant. The Union contended that the agreement applies at Arlington, the Employer that it does not.

The agreement provides for binding arbitration of all disputes requiring the interpretation or application of the agreement. Nevertheless, the Employer refused to arbitrate, arguing that the subject matter of the dispute was not arbitrable and that, even if it were, the dispute was within the exclusive jurisdiction of the National Labor Relations Board (N.L.R.B.).

The Employer, through its Garland Division, for many years operated plants at *both* Garland and Arlington, Texas. The Union represented employees at both facilities. At all times, a *single* collective bargaining agreement applied at both plants.

In early 1971, however, the Employer closed the Arlington plant. Later that year, during negotiations for a new agreement, the parties agreed to eliminate the reference to the Arlington facility. They agreed that the contract would apply at Arlington should the Employer resume operations there. This agreement was embodied in a Letter of Understanding dated February 3, 1972.

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[1] The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 848.

[2] E-Systems, Inc.

The Employer also, as a part of the collective bargaining agreement, continued to recognize the Union as bargaining representative for "the employees as designated in the N.L.R.B. Certification dated January 25, 1951 and those employees designated in Section A of the Memorandum of Understanding dated March 29, 1961", that is, for the Arlington as well as Garland employees.[3] The 1975 and 1978 agreements also include no reference to Arlington but maintained the broad recognition language.

On the Union's Motion for Summary Judgment, the parties offered conflicting evidence on the contract ambiguity. UAW International Representative Roy Kinney stated that the parties had agreed independent of any particular collective bargaining agreement that, if the plant reopened, it would be covered by the extant agreement. The Employer's Director of Industrial Relations averred that the parties had explicitly abrogated the 1972 Letter of Understanding during 1975 contract negotiations and that they intended that the Arlington plant, if reopened, would not be covered by the agreement.

In 1978 the Employer created a new division, the Commercial Division; reopened the Arlington facility as part of that Division; transferred some and hired other employees to conduct its operations; and established wages, hours and other conditions of employment without reference to the collective bargaining agreement. The Union filed grievances charging that the Employer had violated the agreement by failing to apply its terms at Arlington and by laying off bargaining unit employees at Garland while retaining less senior employees in the same job

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[3] The 1951 certification certified the International Union, UAW, as collective bargaining representative for a unit of employees at Garland, Texas. The Memorandum of Understanding dated March 29, 1961 provided for inclusion of employees located at Arlington, Texas in the established collective bargaining unit.

classifications at Arlington. The Employer refused to arbitrate the grievances.

The Union, following the rejection of each arbitration demand, filed suit to compel arbitration under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

The Employer moved to dismiss the action on the ground that the N.L.R.B. had exclusive jurisdiction of the subject matter of the grievances. The Union filed a Motion for Summary Judgment. The District Court denied the Motion to Dismiss, granted the Union's Motion for Summary Judgment, and ordered arbitration. The District Court held:

> The subject matter of the grievances sought to be arbitrated is within the scope of the agreement: the recognition clause provides that the UAW is exclusive bargaining representative of all covered employees, the employees covered by the agreement include employees at the Arlington facility, and the agreement establishes rules governing the order of layoff and other terms and conditions of employment.[4]

The Employer appealed. The Fifth Circuit held that the question of the coverage of the agreement turned on an ambiguity in the contract, which must be left to the arbitrator to decide. The Court of Appeals affirmed the order to arbitrate.

REASONS FOR DENYING THE WRIT

This case poses the question whether, under these particular facts, this Employer is required to submit this dispute, over the interpretation of a collective bargaining agreement, to an arbitrator.

The Employer wants a judicial, rather than arbitral, resolution of the contract interpretation issue at the heart

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[4] Appendix to the Petition at A-2.

of the grievances—whether or not the parties intended the terms of their agreement to be applied at Arlington, Texas. In the alternative, the Employer seeks a holding that the question cannot be arbitrated at all, but must be presented to the N.L.R.B.

This is a common refrain, often heard from those, whether union or management, who are, in a given instance, unhappy with their agreement to arbitrate. But the Court has established clear rules governing the role of the judiciary in resolving questions both of subject matter arbitrability and of representation. The Court of Appeals has applied them here, and has applied them correctly. Therefore, review is unnecessary.

I. THE LEGAL PRINCIPLES CONTROLLING THE DECISION OF THIS CASE ARE SETTLED.

Twenty years ago, this Court established the standard for determining whether a court should order a party to arbitrate a grievance. *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). That standard has not changed. Nor has there been any dispute among the Circuits as to how the standard should be, as here, a case involving the applicability of the terms of an agreement at a particular location. In each reported case involving a broad, general arbitration clause, the Court of Appeals has ordered the issue arbitrated.

The relationship between the N.L.R.B.'s jurisdiction to decide questions of representation, and the arbitrator's authority to interpret the contract, is equally well settled. The Board's jurisdiction does not diminish the obligation to arbitrate. The arbitrator's authority remains intact, absent direct conflict with a ruling of the Board. *Carey* v. *Westinghouse Corporation*, 375 U.S. 261 (1964). The Circuits have applied *Carey* consistently, in exactly the fashion it was applied here.

II. THE COURT OF APPEALS APPLIED THE CONTROLLING LEGAL PRINCIPLES CORRECTLY.

The Fifth Circuit recognized that, under established law, it is required to order arbitration of a grievance unless the arbitration provision of the collective bargaining agreement *expressly* excludes the subject matter of the grievance. The Court below found that the agreement between E-Systems and the Union did *not* expressly exclude the subject matter at issue in the Union's grievance. The Employer has not challenged that finding. Nor has it challenged the Court's finding of ambiguity on the substantive issue to be submitted to the arbitrator—whether the agreement applies at Arlington.

Recognizing the ambiguity of the agreement, the Employer still urges that the District Court should have denied the Motion for Summary Judgment and taken upon itself that contract interpretation issue. Had the Court of Appeals ordered the District Court to try the merits of the dispute, it would have robbed the Union of their right to resolution of the dispute by an arbitrator and ignored the teaching of *United Steelworkers of America* v. *American Manufacturing Co., supra.* The Court below correctly affirmed the arbitration order.

The Court of Appeals ruled that *Carey* v. *Westinghouse Corporation, supra,* controls this case. The Petitioner has not argued that the representation issue posed by the Union's grievances is so different from that posed by the grievance in *Carey* that this Court's ruling therein is not applicable.

CONCLUSION

For the foregoing reasons, the Court should *deny* the Petition.

Respectfully submitted,

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